

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PEDRO GANDARILLA

Claimant

VS.

OLATHE ROOFING

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,003,861

ORDER

Respondent and its insurance carrier appealed the November 14, 2002 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for an April 24, 2001 accident, which the parties stipulated arose out of and in the course of employment with respondent.

In the November 14, 2002 Order, Judge Avery granted claimant's request for medical benefits and temporary total disability benefits. Respondent and its insurance carrier contend the Judge erred. They argue the Board should deny claimant's request for benefits because claimant allegedly failed to make a timely written claim for benefits. That is the only issue before the Board for purposes of this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The award of benefits should be affirmed.

On April 24, 2001, claimant fell from a roof while working for respondent. The parties agree that the accident arose out of and in the course of employment with respondent.

Immediately after the accident, claimant was taken by ambulance to Lawrence Memorial Hospital, where he stayed until approximately May 4, 2001. When claimant was discharged from the hospital, the hospital directed claimant to return in about two weeks for a follow-up visit.¹ But claimant did not return.

On July 10, 2001, the insurance carrier opened a file on this accident and assigned the file a claim number after receiving an accident report from respondent. The insurance carrier began its investigation. After being unable to locate claimant, the insurance carrier closed its file sometime in September 2001.

On July 13, 2001, respondent filed an accident report with the Division of Workers Compensation.

On September 20, 2001, the insurance carrier paid Lawrence Memorial Hospital the sum of \$14,899.23 after auditing the bill and reducing it from the \$19,180.15 which was claimed. According to the insurance carrier's file, on March 5, 2002, the insurance carrier also paid \$337.50 in medical charges that were apparently incurred in either April or May 2001.

Following May 4, 2001, claimant did not again seek medical treatment until sometime in May 2002. On May 10, 2002, claimant filed an application for hearing with the Division of Workers Compensation. Also on that date, respondent received a letter from one of claimant's former attorneys that included a written claim for workers compensation benefits.

At the preliminary hearing the parties stipulated May 4, 2001, was the last date that respondent and its insurance carrier provided claimant with authorized medical treatment before June 2002, when claimant began receiving therapy that the insurance carrier had authorized. The last medical payment made by the insurance carrier in this claim was made on September 12, 2002.

The Judge found claimant made timely written claim and the Board agrees. The Board agrees with the Judge that the time period for making written claim for benefits upon the employer did not begin to run as respondent and its insurance carrier neither advised, nor attempted to advise, claimant that he was no longer authorized to seek medical treatment for his injuries. See *Blake v. Hutchinson Manufacturing Co.*, 213 Kan. 511, 516 P.2d 1008 (1973). According to the insurance carrier's file, the insurance carrier was

¹ P.H. Trans., Cl. Ex. 3.

aware claimant had sustained an injury that could have significant complications.² Under these circumstances, there was a duty to advise claimant that his medical benefits were being terminated.

The November 14, 2002 preliminary hearing Order should be affirmed.

WHEREFORE, the Board affirms the November 14, 2002 Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of January 2003.

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

² Abeyta Depo., Ex. 1 at 5.